

IC 8-1-26

Chapter 26. Damage to Underground Facilities

IC 8-1-26-1

Application of chapter

Sec. 1. (a) Except as provided by this section, this chapter does not apply to the following:

- (1) Excavation using only nonpowered hand tools.
- (2) Excavation using only animals.
- (3) Tilling of soil for agricultural purposes, such as plowing, planting, and combining.
- (4) Surface coal mining and reclamation operations conducted under a permit issued by the natural resources commission under IC 14-34.
- (5) Railroad right-of-way maintenance or operations.

(b) This chapter does apply to blasting, setting drainage tile, subsoiling, and other subsurface activities.

(c) Sections 16, 19, 20, and 22 of this chapter apply to the construction and installation of railroad signal facilities and drainage facilities at public grade crossings.

As added by P.L.69-1990, SEC.2. Amended by P.L.1-1995, SEC.55.

IC 8-1-26-2

"Approximate location" defined

Sec. 2. As used in this chapter, "approximate location" means a strip of land at least four (4) feet wide but not wider than the width of the underground facility plus two (2) feet on either side of the outer limits of the physical plant.

As added by P.L.69-1990, SEC.2. Amended by P.L.54-1994, SEC.1.

IC 8-1-26-3

"Association" defined

Sec. 3. As used in this chapter, "association" means an organization formed in Indiana to provide for mutual receipt of notice of excavation or demolition for the organization's member operators that have underground facilities in Indiana.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-4

"Damage" defined

Sec. 4. As used in this chapter, "damage" means:

- (1) the substantial weakening of structural or lateral support of an underground facility;
- (2) the penetration or destruction of a protective coating, a housing, or another protective device of an underground facility;
- (3) the partial or complete severance of an underground facility;
- or
- (4) rendering any underground facility inaccessible.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-5**"Demolish" defined**

Sec. 5. As used in this chapter, "demolish" means an operation in which a structure or mass of material is wrecked, raised, rendered, moved, or removed by means of tools, equipment, or discharge of explosives.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-6**"Excavate" defined**

Sec. 6. As used in this chapter, "excavate" means an operation for the movement, placement, or removal of earth, rock, or other materials in or on the ground by use of mechanized equipment or by discharge of explosives, including augering, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching, and tunneling.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-7**"Facility" defined**

Sec. 7. As used in this chapter, "facility" means a line or system used for producing, storing, conveying, transmitting, or distributing communication, information, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewerage.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-8**"Imminent danger to life, health, property, or loss of service" defined**

Sec. 8. As used in this chapter, "imminent danger to life, health, property, or loss of service" means there is a substantial likelihood that loss of life, health, property, or service will result before the procedures under sections 16 and 18 of this chapter can be completed.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-9**"Mechanized equipment" defined**

Sec. 9. As used in this chapter, "mechanized equipment" means equipment operated by means of mechanical power, including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, hydroexcavators, and other equipment that may cause damage to underground facilities.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-10**"Operator" defined**

Sec. 10. As used in this chapter, "operator" means a person who owns or operates an underground facility.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-11**"Person" defined**

Sec. 11. As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, or other entity organized under the laws of any state. The term includes state, local, and federal agencies.

As added by P.L. 69-1990, SEC.2. Amended by P.L. 8-1993, SEC.131.

IC 8-1-26-12**"Working day" defined**

Sec. 12. As used in this chapter, "working day" means every day except Saturday, Sunday, and state and national legal holidays.

As added by P.L. 69-1990, SEC.2.

IC 8-1-26-13**Permit authorizing excavation or demolition; compliance with chapter**

Sec. 13. A permit issued in accordance with a law authorizing excavation or demolition operations does not relieve a person from the responsibility of complying with this chapter.

As added by P.L. 69-1990, SEC.2.

IC 8-1-26-14**Excavation or demolition of structure served by underground facility; location of affected structures**

Sec. 14. Except as provided in section 19 of this chapter, a person may not excavate real property or demolish a structure that is served or was previously served by an underground facility without first ascertaining in the manner prescribed by sections 16 and 18 of this chapter the location of all underground facilities in the area affected by the proposed excavation or demolition.

As added by P.L. 69-1990, SEC.2.

IC 8-1-26-15**Recording location of underground facilities; updating information; fees**

Sec. 15. (a) This section applies to recordings made with a county recorder before September 1, 2004.

(b) Except as provided in subsection (e), an operator that has underground facilities located in Indiana shall record with the county recorder of each county in which the facilities are located a list containing the name of each township in the county in which the operator has underground facilities, including those facilities that have been abandoned in place by the operator but not yet physically removed. The list must include the name of the operator and the name, title, address, and telephone number of the operator's representative designated to receive the written or telephonic notice of intent required by section 16 of this chapter.

(c) An operator shall record any changes in the information contained in the list recorded under subsection (b) with the county

recorder of the county in which these facilities are located within thirty (30) calendar days of the change. The document reflecting the changes shall be cross-referenced to the original list recorded under subsection (b).

(d) The county recorder shall charge a fee in accordance with IC 36-2-7-10.

(e) An association meeting the requirements of section 17 of this chapter shall be responsible for providing the information required in subsections (b) and (c) for the association's members and shall be responsible for paying the fee contained in subsection (d) for the association's members.

As added by P.L. 69-1990, SEC.2. Amended by P.L. 114-2003, SEC.1.

IC 8-1-26-15.5

Duty of association to record location of facilities after August 31, 2004

Sec. 15.5. (a) Except as provided in subsection (b), after August 31, 2004, the association described in section 17(c) of this chapter is responsible for:

- (1) providing the information; and
- (2) paying the fee;

required under section 15 of this chapter for each of the association's members.

(b) The association described in section 17(c) of this chapter is not required to provide information or pay a new fee under this section for a member:

- (1) that has provided the information and paid the fee required under section 15 of this chapter before September 1, 2004; or
- (2) on whose behalf the association has provided the information and paid the fee required under section 15 of this chapter before September 1, 2004;

unless the association receives notice from the member of a change in the information recorded before September 1, 2004, under section 15 of this chapter.

As added by P.L. 114-2003, SEC.2.

IC 8-1-26-16

Notice to excavate or demolish; association to receive notice after August 31, 2004

Sec. 16. (a) Except as provided in section 19 of this chapter, before commencing an excavation or demolition operation described in section 14 of this chapter each person responsible for the excavation or demolition must serve written or telephonic notice to excavate or demolish. The notice must be received at least two (2) full working days but not more than twenty (20) calendar days before the commencement of the work. However, a person responsible for excavation or demolition may commence work before the elapse of two (2) full working days if all affected operators have notified the person that the location of all the affected operators' facilities have been marked or that the affected operators have no facilities in the

location of the proposed excavation or demolition.

(b) For a notice served under this section before September 1, 2004, the notice must be served on each operator, or each operator's association, who has recorded a list required by section 15 of this chapter indicating that the operator has underground facilities located in the proposed area of excavation or demolition.

(c) After August 31, 2004, a notice under this section must be served on the association described in section 17(c) of this chapter. A county recorder who receives an inquiry from a person seeking to provide notice of an excavation or a demolition under this section shall refer the person to the association described in section 17(c) of this chapter. After receiving a notice under this section, the association shall:

- (1) determine whether one (1) or more of the association's members have underground facilities located in the proposed area of excavation or demolition, based on recordings made under section 15 or 15.5 of this chapter; and
- (2) provide notice of the proposed excavation or demolition to any member identified under subdivision (1) as having underground facilities located in the proposed area of excavation or demolition.

(d) A person responsible for demolition must give an operator a reasonable amount of time, as mutually determined by the operator, the person responsible for demolition, and the project owner, to remove or protect the operator's facilities before demolition of the structure is commenced.

(e) The written or telephonic notice required by subsection (a) must contain the following information:

- (1) The name, address, and telephone number of the person serving the notice, and, if different, the person responsible for the excavation or demolition.
- (2) The starting date, anticipated duration, and type of excavation or demolition operation to be conducted.
- (3) The location of the proposed excavation or demolition.
- (4) Whether or not explosives or blasting are to be used.
- (5) The approximate depth of excavation.

(f) If the notice required by this section is by telephone, the operator or association shall maintain an adequate record of the notice for three (3) years to document compliance with this chapter. A copy of the record shall be furnished to the person giving notice to excavate or demolish upon written request. For a notice given by telephone after August 31, 2004, the association described in section 17(c) of this chapter is responsible for maintaining the record of notice required by this subsection.

As added by P.L. 69-1990, SEC.2. Amended by P.L. 54-1994, SEC.2; P.L. 114-2003, SEC.3.

IC 8-1-26-17

Association to record facilities and receive notice of demolition or excavation; board of directors; mandatory participation after

August 31, 2004

Sec. 17. (a) Before September 1, 2004, operators, in any combination or group, may form and operate an association in Indiana to record for the association's members the information required by section 15 of this chapter and to provide for mutual receipt of notice of excavation or demolition operations under section 16 of this chapter. An association may provide the service on behalf of operators having underground facilities in Indiana and shall record with the county recorder of the county in which those facilities are located the following information:

- (1) The telephone number and address of the association.
- (2) A description of the geographical area served by the association.
- (3) A list of the names and addresses of each operator receiving the service from the association.

(b) An association formed under this section must have the capability to serve any operator located in Indiana. Associations that qualify under this section include, without limitation, the "One Call" system that is managed by the Indiana Underground Plant Protection Service.

(c) After August 31, 2004, an operator that has underground facilities located in Indiana must be a member of the Indiana Underground Plant Protection Service or its successor organization if the articles of incorporation or the bylaws of the Indiana Underground Plant Protection Service or its successor organization do the following:

- (1) Provide that the board of directors of the Indiana Underground Plant Protection Service or its successor organization is composed of:

- (A) five (5) members representing electric utilities other than municipal electric utilities, including corporations organized or operating under IC 8-1-13 or corporations organized under IC 23-17, some of whose members are local district corporations (as described in IC 8-1-13-23);
- (B) five (5) members representing investor owned gas utilities, including pipelines;
- (C) five (5) members representing telecommunications providers, at least one (1) of whom is a provider of cable television service;
- (D) five (5) members representing water or sewer utilities other than municipal water or sewer utilities; and
- (E) five (5) members representing political subdivisions, including municipal utilities, which must include the political subdivision that owns the largest waterworks utility in Indiana.

- (2) Require the affirmative vote of at least sixty percent (60%) of each category of members in subdivision (1) to approve an increase, a decrease, or any other adjustment to the membership dues, rates, tariffs, locate fees, or any other charges imposed by the Indiana Underground Plant Protection Service or its

successor organization.

(d) The association identified in subsection (c) shall provide the services described in subsection (a) by:

- (1) recording for the association's members the information required by section 15.5 of this chapter; and
- (2) providing for mutual receipt of notice of excavation or demolition operations under section 16 of this chapter.

(e) The association identified in subsection (c) shall:

- (1) annually update the association's grid map data, including street addresses; and
- (2) make reasonable efforts to reduce incorrect locate requests issued to the association's members.

As added by P.L. 69-1990, SEC.2. Amended by P.L. 114-2003, SEC.4.

IC 8-1-26-18

Information required of operators and associations in receipt of notice of intent

Sec. 18. (a) Each operator or association notified under section 16 of this chapter shall, in two (2) full working days of receiving the notice of intent provided in section 16 of this chapter (unless a shorter period is provided by agreement between the person responsible for the excavation or demolition and the operator), supply to the person responsible for the excavation or demolition the following information, using maps when appropriate:

- (1) The approximate location and description of all the operator's underground facilities that may be damaged as a result of the excavation or demolition.
- (2) The location and description of all facility markers indicating the approximate location of the underground facilities.
- (3) Any other information that would assist that person in locating and avoiding damage to the underground facilities, including providing adequate temporary markings indicating the approximate location of the underground facility and locations where permanent facility markers do not exist.

(b) Facility locate markings must consist of paint, flags, or stakes or any combination that mark the approximate location of the underground facilities.

(c) Color coding of facility locate markings indicating the type of underground facility must conform to the following color coding:

Facility and Type of Product	Specific Group Identifying Color
(1) Electric power distribution and transmission	Safety red
(2) Municipal electric systems	Safety red
(3) Gas distribution and transmission	High visibility safety yellow
(4) Oil distribution and transmission	High visibility

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| | | safety yellow |
| (5) | Dangerous materials, product lines, steam lines | High visibility safety yellow |
| (6) | Telephone and telegraph systems | Safety alert orange |
| (7) | Cable television | Safety alert orange |
| (8) | Police and fire communications | Safety alert orange |
| (9) | Water systems | Safety precaution blue |
| (10) | Sewer systems | Safety green |
| (11) | Proposed excavation | White |

(d) Each operator or association notified under section 16 of this chapter shall, within two (2) full working days of receiving the notice of intent provided in section 16 of this chapter, provide notification to the person responsible for the excavation or demolition if the operator has no facilities in the location of the proposed excavation or demolition.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-19

Emergency excavation or demolition; notice requirements

Sec. 19. A person responsible for emergency excavation or demolition to ameliorate an imminent danger to life, health, property, or loss of service is not required to comply with the notice requirements of section 16 of this chapter. However, that person shall:

- (1) give, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground facilities located in the area or to an association described in section 17 of this chapter that serves an operator where the excavation or demolition is to be performed; and
- (2) request emergency assistance from each operator identified in locating and providing immediate protection to the operator's underground facilities.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-20

Duties of persons responsible for excavation or demolition

Sec. 20. In addition to the notice required in section 16 of this chapter, a person responsible for an excavation or demolition operation under section 14 of this chapter shall do all of the following:

- (1) Plan the excavation or demolition to avoid damage to or minimize interference with underground facilities in and near the construction area.

- (2) Maintain a clearance between an underground facility, as marked by the operator, and the cutting edge or point of mechanized equipment.

The clearance under subdivision (2) must be not less than two (2) feet on either side of the outer limits of the physical plant. However, if the clearance is less than two (2) feet, exposure of the underground facility may be accomplished only by the use of hand excavation, air cutting, or vacuum excavation.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-21

Demolition or excavation resulting in damage to underground facility; escape of flammable, toxic, or corrosive gas or liquid; duties of operator

Sec. 21. (a) Except as provided in subsection (b), a person responsible for an excavation or a demolition operation under section 14 of this chapter that results in damage to an underground facility shall:

- (1) immediately upon discovery of the damage, notify the operator of the facility of the location and nature of the damage; and
- (2) allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of the facility.

(b) A person responsible for an excavation or a demolition operation under section 14 of this chapter that results in damage to an underground facility permitting the escape of flammable, toxic, or corrosive gas or liquid shall:

- (1) immediately upon discovery of the damage, notify the operator and local police and fire departments having jurisdiction; and
- (2) take other action necessary to protect persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire personnel.

As added by P.L.69-1990, SEC.2.

IC 8-1-26-22

Pecuniary loss suffered by operator; civil action; damages; defenses; injunction

Sec. 22. (a) If an operator suffers a pecuniary loss as a result of a violation of this chapter, the operator may bring a civil action against the person who caused the loss for the following:

- (1) An amount equal to the operator's actual damage to the facility.
- (2) The costs of the action.
- (3) A reasonable attorney's fee.

(b) At the court's discretion, a court having jurisdiction may award punitive damages up to three (3) times the operator's actual damage.

(c) It is a defense to an action brought under this chapter if an operator fails to comply with the duties imposed under this chapter.

(d) In addition to the remedies described in subsection (a), an operator may bring an action to enjoin a person excavating or demolishing a structure in an area that includes the operator's facilities until that person complies with this chapter.

As added by P.L.69-1990, SEC.2.